

United States District Court  
Northern District of California

**\*E-FILED: October 10, 2013\***

NOT FOR CITATION  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FELTON A. SPEARS, JR. and SIDNEY  
SCHOLL, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

FIRST AMERICAN EAPPRAISEIT (a/k/a  
eAppraiseIT, LLC), a Delaware limited  
liability company,

Defendant<< (s) >>.

Case No. 5:08-cv-00868 RMW (HRL)

**ORDER RE DISCOVERY DISPUTE  
JOINT REPORT NO. 3**

[Re: Docket No. 339]

In Discovery Dispute Joint Report (DDJR) No. 3, plaintiffs request that the deposition of non-party Peter Gailitis be extended for an additional 30-minute examination by telephone. This court is told that Gailitis was Chief Appraiser at defendant First American eAppraiseIT (EA) during most of the period in which EA performed appraisal services for Washington Mutual. He was deposed on September 17, 2013. Plaintiffs examined him for their allotted 4.5 hours. EA deposed the witness for its allotted 2.5 hours. Plaintiffs said they wished to conduct a redirect examination. Gailitis agreed to make himself available for a further 30-minute deposition to be conducted by telephone on another day.<sup>1</sup> That is fine by plaintiffs. EA, however, objects to any

<sup>1</sup> Prior to the deposition, Gailitis said that he would be willing to stay beyond the presumptive 7-hour limit to make sure that his deposition would be completed that day. During the final break in

1 further examination of Gailitis, saying that it never agreed to a multi-day deposition. This matter  
2 is deemed suitable for determination without oral argument. Civ. L.R. 7-1(b). Upon consideration  
3 of the parties' respective positions, the court grants plaintiffs' request for an additional 30-minute  
4 telephone examination.

5 With respect to EA's argument that the instant DDJR is untimely, the court will credit  
6 plaintiffs' assertion that they were trying to meet-and-confer to resolve a dispute as to which they  
7 believed the parties had not reached an impasse.

8 "Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7  
9 hours." Fed. R. Civ. P. 30(d)(1). The court must allow additional time consistent with Fed. R.  
10 Civ. P. 26(b)(2) if needed for a fair examination. Id.

11 The court finds good cause for the requested extension here. All indications are that  
12 Gailitis is a key witness. Plaintiffs wish to conduct a brief redirect examination, to last no more  
13 than 30 minutes by phone (and, indeed, plaintiffs are willing to split the 30 minutes with EA, if  
14 EA wishes). Gailitis has no problem with the additional examination, notwithstanding that he has  
15 already been deposed by the parties for 7 hours. EA has already prepared for, and completed, its  
16 examination of Gailitis. The court does not find that preparation for an additional 30-minute  
17 telephonic examination will impose an undue burden.

18 As for timing, EA says that the parties already have a full deposition schedule in these last  
19 two weeks leading up to the October 15 fact discovery cutoff. Nevertheless, given the limited  
20 extension of Gailitis' deposition being granted here, this court finds that there is some leeway in  
21 the current case schedule to allow his further deposition to be conducted beyond the October 15  
22 cutoff date without jeopardizing the remaining case deadlines. Accordingly, Gailitis deposition is  
23 extended for an additional 30-minute telephonic examination to be completed before the  
24 November 15 expert disclosure deadline and on a date that will not require modification of the  
25 current case schedule. If EA decides that it wishes to ask the deponent further questions, the 30  
26 minutes shall be split equally between plaintiffs and defendant. The parties and Gailitis shall work

27  
28 EA's examination, however, Gailitis advised that he had to leave by 5:00 p.m. (Dkt. 339, DDJR  
No. 3 at 2).

1 together in good faith to find 30 minutes on a date between now and November 15 to complete the  
2 deposition. If the parties are unable to schedule a date before then, or if they find that conducting  
3 Gailitis' deposition beyond the October 15 cutoff will require modification of the other case  
4 management deadlines, they shall seek relief from Judge Whyte.

5 **SO ORDERED.**

6 Dated: October 10, 2013

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9 HOWARD R. LLOYD  
10 UNITED STATES MAGISTRATE JUDGE  
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5:08-cv-00868-RMW Notice has been electronically mailed to:

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